

**U.S. Department of Agriculture
Food and Nutrition Service
Administrative Review Branch**

215 Market #4433122722,

Appellant,

v.

Case Number: C0222592

Retailer Operations Division,

Respondent.

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture, Food and Nutrition Service (FNS), that there is sufficient evidence to support a finding that 215 Market #4433122722 (hereinafter Appellant) was properly permanently denied authorization to participate in the Supplemental Nutrition Assistance Program (SNAP), by the Retail Operations Branch.

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.1(o) and §278.1(k)(4), in its administration of the SNAP when it permanently denied the application of Appellant to participate as an authorized SNAP retailer on September 3, 2019.

AUTHORITY

7 U.S.C. § 2023 and the implementing regulations at 7 CFR § 279.1 provide that “A food retailer or wholesale food concern aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 . . . may . . . file a written request for review of the administrative action with FNS.”

CASE CHRONOLOGY

The record reflects that on August 5, 2019, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** signed as owner, an application for authorization to participate in the SNAP. Appellant was subsequently advised in a letter dated September 3, 2019, of the Retailer Operations Division’s decision to permanently deny the application of Appellant to participate as an authorized retailer in SNAP. The determination letter stated the following:

“The Food and Nutrition Service (FNS) has determined that you filed a SNAP application that contains false or misleading information about a substantive matter,

which results in a denial, in accordance with Sections 278.1(k)(4) and 278.1(o) of the SNAP regulations. It is the determination of FNS that you knowingly submitted a SNAP application that contained false information of a substantive nature regarding your eligibility to participate in SNAP. SNAP regulations at 278.6(e)(1)(iii) provide that any firm found to have provided false information on their application relating to such matters shall be denied permanently.”

In a letter dated September 11, 2019, Appellant appealed the Retailer Operations Division’s decision and requested an administrative review of this action. The appeal was granted.

STANDARD OF REVIEW

In appeals of adverse actions, an appellant bears the burden of proving by a preponderance of the evidence that the administrative actions should be reversed. That means an appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

CONTROLLING LAW

The controlling statute in this matter is contained in the Food & Nutrition Act of 2008, as amended, at 7 USC § 2018 and in Part 278 of Title 7 of the Code of Federal Regulations (CFR). 7 USC § 2018, 7 CFR § 271.2, § 278.1(o) and § 278.1(k)(4) establishes the authority upon which a retail food store or wholesale food concern may be denied authorization to participate in the SNAP on the basis of a lack of business integrity.

7 CFR § 278.1(o) relays specific program requirements for retail food store participation, which reads, in part, “Applications containing false information. The filing of any application containing false or misleading information may result in the denial of approval for participation in the program, as specified in paragraph (k) of this section, or disqualification of a firm from participation in the program, as specified in § 278.6, and may subject the firm and persons responsible to civil or criminal action.”

7 CFR § 278.1(k)(4) relays specific program requirements for retail food store participation, which reads, in part, “The firm has filed an application that contains false or misleading information about a substantive matter, as specified in § 278.6(e). Such firms shall be denied authorization for the periods specified in § 278.6(e)(1) or § 278.6(e)(3);”

The regulations have clearly set out the position of the agency with regard to the business integrity of participating retailers. There is no discretion available to any party involved in the determination of eligibility or the determination of an administrative review regarding the seriousness of a business integrity violation. If the matter violates the provisions of § 278.1(o) and § 278.1(k)(4), action to deny or withdraw must be taken accordingly.

APPELLANT'S CONTENTIONS

In response to the Retailer Operations Division denial letter and in the request for administrative review, Appellant has stated as its position in the matter the following:

1. I would like to inform you that I misunderstood the question in regard to the relative who has been disqualified to accept SNAP. I answered that question no because I thought the question is asking of any relative who will be involved in the 215 Market. My son 5 U.S.C. § 552 (b)(6) & (b)(7)(C) will not be involved in 215 Market, therefore my answer to this question is no.
2. Requesting to reconsider my application, I did not understand the question.
3. My convenience store is located in a low income area and there are many families and senior citizens who are asking if we accept SNAP. Not accepting SNAP put a burden on these families and senior citizens to walk to far of a distance, especially that many of them do not have automobiles.

Appellant provided five (5) pages of 120 signatures stating that food stamps are needed. The preceding may represent only a brief summary of Appellant's contentions in this matter. However, in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

ANALYSIS AND FINDINGS

With regards to Appellant's contentions, the record reflects that Appellant provided Retailer Operations Division with a copy of the firms Lease and Deed agreement. The owner's son, who was previously permanently disqualified, is listed on the property Lease/Deed, signed and dated on August 3, 2017, as a joint tenant with Appellant at the location of 215 Market. This indicates that the owner's son has operational interest in the business. Appellant signed two affidavits dated December 19, 2018 and February 14, 2019, and answered "no" on question #4 which states "Persons who were owners of managers of any store that has been permanently disqualified from SNAP or WIC are financially involved or have other operational interest in this store" and question #6 which states "One or more owners or managers of this firm are related by birth or marriage to an owner or manager of a firm that is or has been disqualified from SNAP or WIC."

As previously mentioned, 7 CFR § 278.1(o) is specific in its requirement that "the filing of any application containing false or misleading information may result in the denial of approval for participation in the program..." There is no agency discretion in the matter of what sanction is to be imposed when a SNAP application that contained false information of a substantive nature regarding SNAP eligibility is involved. In the same manner, neither the Food and Nutrition Act of 2008, as amended, nor SNAP regulations, provide the agency with discretion for dismissal of any action or for mitigating the impact of those actions on the basis of an owner's honesty on the SNAP application. If the matter violates the provisions of 7 CFR § 278.1(o), as is the case here, action to deny must be taken accordingly.

CONCLUSION

Based on the discussion above, the determination by the Retailer Operations Division to permanently deny the application of 215 Market #4433122722 to participate as an authorized SNAP retailer is sustained.

RIGHTS AND REMEDIES

Your attention is called to Section 14 of the Food and Nutrition Act of 2008, as amended, (7 U.S.C. § 2023) and to Title 7, Code of Federal Regulations, Part 279.7 (7 CFR § 279.7) with respect to your right to a judicial review of this determination. Please note that if a judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which you reside or are engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision.

Under the Freedom of Information Act (FOIA), we are releasing this information in a redacted format as appropriate. FNS will protect, to the extent provided by law, personal information that could constitute an unwarranted invasion of privacy.

Monique Brooks
ADMINISTRATIVE REVIEW OFFICER

November 20, 2019